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kgonzale@up.edu.mx

Universidad Panamericana

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SOME ETHICAL CONSIDERATIONS ABOUT PORNOGRAPHY REGULATIONS

María José Pietrini Sánchez

Universidad Panamericana, Ciudad de México
mpietrini@up.edu.mx

Abstract

The aim of this paper is to propose four ethical conditions so as to regulate pornography in a liberal democratic state: the first two are related with the production of the pornographic material; the third with the content of the material; and the fourth with its social repercussions. In order to do so, a definition of pornography is firstly presented, under the scopes of the radical and liberal feminists. Secondly, a normative framework is developed to determine when the pornographic material is ethically permissible, and when it is not. Finally, a recommendation is provided in relation to what the state should do in each case, and a distinction is made between three fields: (i) the conditions in which pornography is produced, (ii) the content it represents or depicts, and (iii) its social consequences. The conclusion to this paper is that the state should not censure all pornographic materials, as radical feminists insist upon, but only ban and punish those which do not meet the ethical conditions advised.

Keywords: pornography, radical feminists, liberal feminists, gender violence, freedom of speech.

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ALGUNAS CONSIDERACIONES ÉTICAS SOBRE LA REGULACIÓN DE LA PORNOGRAFÍA

María José Pietrini Sánchez

Universidad Panamericana, Ciudad de México
mpietrini@up.edu.mx

Resumen

El objetivo de este artículo es proponer cuatro condiciones éticas para la regulación de la pornografía en un Estado con tendencia liberal democrática: las dos primeras se relacionan con la producción del material pornográfico, la tercera con el contenido de dicho material y la cuarta con su repercusión social. De acuerdo con ello, en primer lugar, se presenta una definición de pornografía que incluye las perspectivas de las feministas radicales y liberales. En segundo lugar, se desarrolla un marco normativo para determinar cuándo un material pornográfico es éticamente permisible y cuándo no. Finalmente, se sugiere una recomendación en relación a lo que el Estado debería hacer en cada caso y se hace una distinción entre tres ámbitos: (i) las condiciones bajo las cuales es producido el material pornográfico, (ii) el contenido de lo que representa o describe, y (iii) sus consecuencias sociales. Se concluye que el Estado no debería censurar todos los materiales pornográficos, como las feministas radicales insisten, sino sólo prohibir y castigar aquellos que no cumplan con las condiciones éticas que se proponen.

Palabras clave: pornografía, feministas radicales, feministas liberales, violencia de género, libertad de expresión.

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The debate on pornography over the last thirty years has focused on whether or not *sexually-explicit* content can harm actors, consumers, women, or society in general. On one hand Radical Feminists claim that pornography is violent to women because it reinforces gender inequality, therefore being intrinsically unethical, and consequently should be forbidden; (e.g. Longino, 1980; A. Dworkin, 1981; MacKinnon, 1987; Langton 1990, 1993). On the other hand, liberal feminists claim that pornography is a case of free speech. The liberal feminists' argument underpins the understanding of the body as property that frames personal autonomy. Liberal Feminists defend that there is not a reason strong enough to prohibit or restrict any exposure of the body when freely chosen and when no harm is caused to third parties. They argue that by banning pornographic materials patriarchal structures are reinforced, and thus civic equality is obstructed.

Two different groups within liberal feminists, are noticeable. The first one, to which I will refer as the *moderate-liberal feminists* (e.g. Nussbaum, 1999; Dyzenhous, 1992; West, 2006; Spaulding 1998, 1999), argue that in order to protect individual autonomy, civic equality and freedom of speech, as well as many other liberal values, certain types of pornography should be prohibited, but not all. This group forbids some pornographic material, such as violent pornography or non-violent but, specially degrading pornography, claiming it ought to be forbidden because it could provoke significant damage to society in general, but especially to women, as it reinforces pernicious stereotypes and, in a more direct way, because of the violent treatment many women suffer during pornography production.

The second group, to which I will refer as the *strong-liberalists* (e.g. R. Dworkin, 1993; Strossen, 1995; Almodovar, 2006; Schwarzenbach, 2006; Easton, 1994; Feinberg, 1985; McElroy, 1995), defend an absolute openness to produce, sell and consume any kind of pornography whatsoever. They consider there is no real, strong enough evidence to prove that pornography injures society or women in particular. Hence, they argue, the true harm is done by banning it, insofar as it constitutes a violation of producers' and actors' freedom of speech, as well as consumers' private rights. They insist on the rights of free individuals to decide for themselves to do as they wish with their own bodies. They build their argument upon a Lockean particular understanding of the

rights over the body, which implies equating the worth of the body to that of private property.

The debate on pornography puts forth questions such as: Which descriptions or representations of sexually-explicit materials are ethically problematic and which are not?, Are all pornographic materials an expression of gender inequality?, Does the ethical status of the pornographic industry depend on the material itself or rather on the social consequences it has?, What role should the society and the state have in relation to the production, merchandise, distribution, and consumption of pornography?

In this paper I propose a way to answer these questions. The aim of this paper is to present an introductory approach to the minimum ethical conditions that should be taken into account to regulate pornography in a state that tends to be liberal-democratic. By all means, my standpoint is not final regarding the discussion around the ethical status of pornography. Attempting to give a conclusive answer to the debate would be oversimplifying the matter at hand.

To that extent, my argument will be developed in three sections. All through the first section I will examine what pornography is. In the second section, I will build a framework to determine when the pornographic material is ethically permissible, and when it is not. Finally, in the third section, I will suggest what the state should do in relation to either case. In order to do so, a distinction is made between three fields: (i) the conditions in which pornography is produced, (ii) the content it represents or depicts, and (iii) its social consequences.

My case will be built upon a consequentialist ethical perspective. Generally speaking, this view holds that the ethical rightness of an act depends only on the consequences of the particular act or of something related to that act, such as the motives behind the act, the social value of the consequences of the act, or the actual benefits to the agent or to society in general.

Throughout this paper, the notion of *human dignity*¹ will be considered from the perspective of the UN's Universal Declaration

¹ For the present purposes, I will particularly consider Article 1 (equal human dignity); Article 3 (the right to life, liberty, and security of person); Article 4 (the prohibition of slavery or servitude) Article 5 (the prohibition of "cruel, inhuman or degrading treatment"); Article 7 (the guarantee of non-

of Human Rights. Additionally, concepts of *gender equality*² and *gender violence*³ will be taken into account from the perspective of the Convention on Elimination of All forms of Discrimination against Women (CEDAW) and of the Declaration on the Elimination of Violence against Women. With a clear idea of these concepts that range from a broad to a consensual perspective, a more accurate argument is built on common ground within the various feminist perspectives.

I. What is Pornography?

In 1964, Potter Stewart (1964), an Associate Justice of the United States Supreme Court, famously said: "I can't define pornography, but I know it when I see it." Even if sometimes it is easy to point out when a particular material is pornographic, it is a fact that the term is not always understood in the same way. In fact, the meaning changes according to time, culture, and society. The different conceptions of pornography

discrimination and the equal protection of the laws); Article 19 (right to freedom of opinion and expression); and Article 23 (right to free choice of employment).

² *Gender equality* refers to the equal rights, responsibilities and opportunities of women, men, girls, and boys. Equality means that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality, therefore, is not a "women's issue" but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centred development.

³ *Gender-based violence* is considered to be any harmful act directed against individuals or groups of individuals on the basis of their gender. It may include sexual violence, domestic violence, trafficking, forced/early marriage and harmful traditional practices. It is a form of discrimination, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include: the right to life; the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; the right to equal protection according to humanitarian norms in time of International or internal armed conflict; the right to liberty and security of the person; the right to equal protection under the law; the right to equality in the family; the right to the highest standard attainable of physical and mental health; and the right to just and favourable conditions of work.

are mainly associated with the meaning we give to “obscene,” “erotic,” “pure,” and “decent,” in relation to the representations or descriptions of sexually-explicit materials.

The feminist debate on pornography implies a challenge to the different assumptions on what is or what is not ethically permissible regarding sexually-explicit materials. Radical feminists found their argument on the Kantian idea of *objectification* from a feminist perspective. They argue that sexual intercourse is by itself dangerous, because it implies perceiving and treating a woman merely as a sexual object, and not as a person or as a subject with dignity that deserves respect. This is because sexual desire is irrational⁴ and leads men to diminish women to their bodies, particularly, to their sexual organs, which result in an objectifying, dehumanizing, and depredating behaviour.

Those who defend this perspective believe that pornography is translated to heterosexual acts that are intrinsically violent against women and legitimate the idea that men can treat women as fungible and violable objects⁵. Furthermore, they claim that pornography is an

⁴ Among radical feminists, the idea that sexual desire is irrational has many interpretations. Following Kant, A. Dworkin (1987) and Longino (1980, 45), for example, assume that sexual desire is in itself devoid of rationality, which makes it an impulse hard to contain. However not every radical feminist is sympathetic to A. Dworkin's and Longino's argument, but for present purposes I shall not discuss their feminist critics. On the other hand, MacKinnon (1987, 50), Haslanger (2002, 232 ss.) and Langton (2009, 12) link the idea of the irrationality of sexual desire with the Norm of Assumed Objectivity. They argue that the Norm of Assumed Objectivity is the mechanism by which objectification occurs. According to them, in an intercourse, men objectify women by reducing her to her body and taking her as a tool for his own pleasure. The Norm of Assumed Objectivity hides or “masks” objectification as a neutral and objective process. Therefore, this norm appears as an objective and neutral phenomenon that acts as the infrastructure of sexual desire and, as such, cannot be understood rationally.

⁵ MacKinnon (1989, 144) recognizes many variations in gender representations expressed in pornographic materials. She argues that when these materials attempt to symbolize a reversal of the roles of domination and submission, as the *dominatrix* or *homosexual pornography*, sexual stimulation is intended to generate pleasure, derived from an imitation or parody, or from denial of standardized sexual norm. This does not weaken, but reaffirms the standardized norm of sexuality.

example of how in a patriarchal culture, a woman is not free to reject heterosexual intercourse, and as a result, becomes a public spectacle of exploitative and violent pornography through sex, denying a woman's autonomy and subjectivity and forcing her to remain silent. Pornography is a tool that men use to train women to submit sexually (MacKinnon, 1987, 188). Pornography could be defined as the record of sexual abuses against women. And those who consume it collaborate with this violation.

This thought is synthesised in the Civil Right Ordinance that Andrea Dworkin and Catherine MacKinnon campaigned in 1983:

"Pornography" means the graphic sexually explicit subordination of women through pictures and/or words that also includes one or more of the following: (a) women are presented dehumanized as sexual objects, things or commodities; or (b) women are presented as sexual objects who enjoy humiliation or pain; or (c) women are presented as sexual objects experiencing sexual pleasure in rape, incest, or other sexual assault; or (d) women are presented as sexual objects tied up cut up or mutilated or bruised or physically hurt; or (e) women are presented in postures or positions of sexual submission, servility, or display; or (f) women's body parts—including but not limited to vaginas, breasts or buttocks—are exhibited such that women are reduced to those parts; or (g) women are presented being penetrated by objects or animals; or (h) women are presented in scenarios of degradation, humiliation, injury, torture, shown as filthy or inferior, bleeding, bruised or hurt in a context that makes these conditions sexual. (MacKinnon, 1987, 176)

As the Ordinance shows, radical feminists believe what makes pornographic materials unethical is the permanent representation of women as an object made to satisfy men's sexual desires. Hence, what makes a material pornographic, is not its sexual content, but the inequality context that it eroticises (Longino, 1980). Thus, what distinguishes pornography from other patriarchal expressions is that pornography causes sexual inequality to appear as something sexy (Longino, 1980, 45).

To contrast this perspective, liberal feminists are shown as the traditional defenders of the rights to produce and consume pornography. In general, they agree with the use of J. Stuart Mill's harm principle for ethical guideline. They believe that censorship is only justified when real evidence of damage to the interests of others is caused by its publication or consumption occurs. However, there is no agreement within liberal feminists as to where the damage lies, and on the weight of isolated real life examples of pornography that may damage the general argument. Everyone agrees that autonomy, equality, and freedom of speech should be protected, but they disagree on what constitutes violations to these values.

On the one hand, moderate-liberals claim that some forms like violent or degrading pornography should be banned. They argue that pornography appears to cause harms to third parties, not only through the reinforcement of injurious stereotypes but in more direct ways: through the effect on men who abuse women and, in many cases, through harmful exploitation of actresses and models in its production (Nussbaum, 1999, 23). Although some important coincidences can be found between radical and liberal feminists' arguments about the ethical target of pornography, there are fundamental disagreements on their proposed solution: according to Moderate-liberal feminists, absolute censorship can have a negative effect on some valuable speeches, including feminist critiques of pornography.

On the other, strong-liberals defend an absolute openness of pornography production, selling and consumption. Strong-liberals found their argument on the idea that the body is a case of private property. They claim that the rights over the body are pre-political, thus they comprise an essential part of human dignity and, as such, should be protected by the government. Accordingly, to ban or restrict the free exposure of the body or its parts would mean a violation to the fundamental rights of the individual. Moreover, strong-liberals insist that free exposure of the body constitutes a claim against patriarchy, while contributing with female sexual liberation.

Despite the differences between liberal feminists, both groups have made an important critique to radical feminists' view on pornography. They accuse radical feminists of defending false assumptions of the ethics of any pornographic material. While it is true to say that many of the pornographic materials that are currently produced and consumed

are like A. Dworkin and MacKinnon have described,⁶ not every pornographic material represents heterosexual intercourse, or sexual subordination, or violence against women.

Regarding the liberal critique, and in order to clarify the ethical status of pornographic materials it is necessary to consider a more neutral and comprehensive definition that includes both radical and liberal feminists' concerns. To that end, a definition is suggested:

Pornography is any material that represents or describes in an explicit way sexual acts or sexually suggestive positions —that is, those representations or descriptions where the genital organs appear in the first foreground— with the intention of causing sexual arousal in the spectator.

This definition includes what is mentioned in the Anti-pornographic Civil Ordinance, but it is not limited to it. It also includes other materials like audio, writings, or visual representations of sexual acts, and the exposition of sexual organs such as the vagina, the anus, and the penis, especially if it is erect, that can represent or describe sexually suggestive positions between men and women, homosexual intercourses, or sexual relationships between adults, even when listed as equals and as if consenting to their participation in the activity. As well as representations or descriptions of children in sexually suggestive positions or having sex with each other or with one or more adults, and it also includes bestiality and necrophilia.

⁶ Most of the pornographic materials currently produced present images or descriptions that erotize either gender, economic, social or racial inequality. They promote injurious stereotypes about women and sexual minorities and reinforce gender-based violence. In this sense, the pornographic material currently produced can be considered a case of hate speech: they insist on the representation and description of woman as a sexual object, and spread and legitimize certain perspectives on women that influence the behaviour and attitudes of men and of society in general in relation to women, undermining welfare and sexual equality of women involved in this industry, as well as the women in general. Because of that, pornographic materials currently produced are detrimental to human dignity.

II. What is the Ethical Status of Pornography?

It can be seen that according to the above definition of pornography, the term of “pornography” is broad and slippery. What makes certain material to be considered as pornographic depends on different aspects such as the authors’/producers’ intentions, the viewers’ interpretation, and the social impact it may have.

Thus, three aspects should be taken into account to evaluate the ethical status of a pornographic material: (i) the way in which it has been produced; (ii) the content that it depicts or describes; and (iii) the social repercussions of the content. Accordingly, pornographic material can be ethically permissible when it meets the following conditions:

1. If there are people involved in the production of the pornographic material (this condition excludes literature and animated characters), it mostly avoids rape, sexual assault, child abuse, sex trafficking, racial discrimination, extortion, tricks, or any other kind of autonomy transgression, within the production itself (although not necessarily in the content represented).⁷

It can be argued, however, that there cannot be genuine consent of people involved in the production of the pornographic material.

⁷ Most of pornographic materials produced nowadays are typically produced by illegal acts, such as rape, sexual assault, child abuse, sex trafficking, racial discrimination, extortion or fraud. All feminists’ perspectives agree that those materials should not be protected by the law under the excuse of freedom of expression, but should be prohibited and punished, as they directly undermine human dignity. However, the regulation of the production of pornographic materials is increasingly difficult. Within the last decades there is an ever-increasing amount of illegal free porn sites. This situation has hampered the control on the production, distribution and consumption, for the reason that the pursuit of illegal forms of pornography stumbles upon issues such as freedom of expression, sovereignty, privacy and protection of personal data. The most alarming case is child pornography. Although child pornography is banned worldwide, it is unfortunately a reality that this type of pornography is still produced and is often related to trafficking and sex tourism. Technological advances and differences among laws of each country hinder the pursuit of perpetrators, distributors and consumers of such materials.

According to MacKinnon, in patriarchal societies, women are often not free to refuse sex with men. Moreover, she insists that pornography is a tool that can be used to terrorize women viewers, or to obtain their cooperation with their abusers. Her argument can be linked with Pierre Bourdieu's theory of *symbolic violence*. According to Bourdieu (Bourdieu & Wacquant, 1996, 167-168), "symbolic violence is the violence which is exercised upon a social agent with his or her complicity." He states that the perverse of this phenomenon is that it is not perceived as violence but as something normal or objective,⁸ and it is part of the lifestyle and *habitus*⁹ of people. The paradigmatic form of symbolic violence, according to Bourdieu, is the logic of gender domination.

Nonetheless, MacKinnon's critique fails to distinguish between victims and those who freely choose to participate in the production of a pornographic material under controlled conditions.¹⁰ Denying this division could justify paternalistic or authoritarian policies that attempt to coerce the right of freedom of choice of an employment¹¹ or the right of freedom of expression¹². It also reinforces the patriarchal perception of women as heteronomous, as it assumes that all women are

⁸ The theory of Bourdieu can be connected to the theory of the Norm of Assumed Objectivity. However, for the particular purposes of this writing, I will not provide a more broad explanation about such connection.

⁹ By *habitus*, Bourdieu refers to the socialized subjectivity. It is the generation of practices that are shaped by the social conditions that support them. It is the way in which social structures are printed in our bodies and in our minds, and model the structures of our subjectivity. Apparently, the *habitus* seems innate, however it is a social construct that shapes our schemes of thought, perception and action.

¹⁰ By controlled conditions I mean that the pornographic material is produced under ethical conditions. This means that the production implies the respect of the human rights of the actors: The actors are respected in their dignity (Article 1 of the Universal Declaration of Human Rights); they are not discriminated against on the basis of race, sex, gender or social class, and they are equally protected by law (Article 7); they are treated with the care of their physical and psychological health (Articles 3 and 5); their participation receives a fair wage and implies full consent (that excludes the participation of minors), (Articles 4 and 23); freedom of opinion and expression is respected and promoted (Article 19).

¹¹ Contra Article 23 of the Universal Declaration of Human Rights.

¹² Contra Article 19 of the Universal Declaration of Human Rights.

victims even though they still do not know and are incapable to choose by themselves what is best for them. A similar discussion takes place around the issue of prostitution. But for present purposes, I will not enter into that discussion.

2. If there are people involved in the production of the pornographic material, it is contentious to say whether the actors can or not perform explicit sexual acts on stage when receiving any financial compensation for it (this would be prostitution, which leads to another discussion). This condition does not eliminate the *Posporn*,¹³ because even though the actors have explicit sex, they do not receive financial compensation. Additionally, it does not eliminate explicit sex between fictional characters nor *Softporn*.

3. The content of the pornographic material does not try to cause sexual excitation in the viewer through violent, dehumanized, *hypersexualized*¹⁴ or discriminatory descriptions or depictions. The ethical character of this condition lies in the suitability between the author's intentions and the viewer's interpretations. This is because this kind of pornography encourages the viewer to sexually enjoy sexual inequality, sexual and gender violence, and it contributes to creating an undemocratic atmosphere, so this kind of pornographic material may be regarded as hate speech, while promoting the spread of objectifying, discriminatory, and *hypersexualizing* stereotypes.

¹³ Beatriz Preciado (2008) defines *Posporno* as the movement that aims to provide an overview on pornography and sexuality based on self-experimentation rather than representation, questioning and subverting the construction of identities, fantasies and sexualities and claiming pornography that is made behind, and not just in front of the camera. *Posporno* fights against female and masculine idealized body, creating new levels of action and subjectivity: new bodies, new subjectivities, which had traditionally been passive objects of pornographic representation.

¹⁴ *Hypersexualization* can be understood as the exaggeration of the sexual organs represented either graphical or literary form. The sexual organs are represented as objects that exceed normal physical measures. For example, a penis that measures a meter or a bust that measures more than two basket balls.

However, it is important to point out that there is always room for misinterpretation. Some viewers might construe a different meaning from certain materials that the one the producer intended to portray. For example, a viewer might be sexually aroused from watching violent sexually explicit material, even if that was not the producer's intention. Or it is possible that the producers' intentions were to cause sexual arousal in the consumer through material with violent sexually explicit content, but the viewer does not experience pleasure, but rather shock and repulsion. In that regard, Nelson Goodman's (1976, 7-8) idea that "there is no innocent eye," might be taken as a premise, in order to judge whether sexually explicit material is pornographic.

Rae Langton has developed an important theory about how women and their voice in a public discourse is misinterpreted because of pornography. Langton adopts many ideas from MacKinnon about how pornography silences women. According to MacKinnon (1985, 483-484), in a social context underlying gender inequality, women can be silenced in three different ways:

The first is in a literal sense: pornography creates a social climate that forces women not to speak at all. Women reporting rape and sexual abuse are derided, misunderstood, blamed and punished, thus they prefer to remain silent to avoid public embarrassment. Women, children included, are silenced when the producer of pornography threatens or intimidates them and when they have been injured by participating in the production of any pornographic material.

The second form in which pornography silences women is created and reinforced through a social climate where they are not taken seriously. Pornography in general, causes people to ignore, misinterpret, ridicule, distrust and disagree with what women say, especially when women say things that contradict the stereotype of a woman depicted in pornography.

And the third way is in which the woman is silenced systematically is by the misreading of porn consumers: "When someone tries to say what happened, she is told that her 'no' means 'yes' ..." (MacKinnon, 1993, 30). The third way differs from the second in a very subtle manner. In order to clarify the difference, Langton (1993, 320-321) considers J. L. Austin theory of speech acts helpful in understanding different ways in which the woman statement "no" fails. She explain her theory through the following examples:

Case 1: A woman says “no”, sincerely trying to reject with her words the sexual advances of a man. He hears the “no” and understands that the “no” of the woman means a rejection to his sexual advances. But he continues with his sexual advances, because he is excited by the idea of overcoming the resistance of the woman or simply by being indifferent to it. In this case, the man understands that “no” means a woman rejection, but just ignores it. This case illustrates the second way in which the woman is silenced. The man understands that the “no” means “no”, but rejects and despises and ignores the will of the woman.

Case 2: A woman says “no”, with the intention that it be interpreted as a rejection of sexual advances of man. The man hears the word “no”, but does not understand that “no” is a rejection. Instead, he understands that when she says “no” is playing to provoke him. And then he continues with his sexual advances.

In the latter case, the word “no” that the woman pronounces fails in its intention to communicate the idea of rejection, and instead it is understood as an expression of provocation and encouragement. This case illustrates the idea that in a sexual context, when a woman says “no” she means “yes”. If a woman is silenced in this way, then, according to Langton (1993, 325), men can rape the woman without even realizing it.

According to MacKinnon and Langton, pornography communicates meaning ideas with particular sounds, gestures and behaviours of women in sexual contexts. Radical feminists claim that these ideas inspire consumers of pornography (either consciously or unconsciously) to reproduce those ideas, which may include rape and other sexual crimes. Therefore, they claim that consumption of pornography causes harm to others, and thus, should be censored.

In contrast with that perspective, some of the defenders of pornography argue that its consumption could have a cathartic function. They point that pornography has a benefit in release of sexual impulses and can serve to channel aggression and decrease the level of sexual violence towards women (Easton, 1994, 14). Proponents of this idea argue that the increase in the consumption of pornography in the last twenty years has coincided with a marked reduction of violent crimes against women, including rape and workplace sexual harassment (McElroy, 1995, 143).

Even if any of both theories is true or not, it is important to note that is very difficult to prove the causal line between pornography consumption

and its effects (whether negative or positive). While numerous studies¹⁵ attempt to demonstrate that the connection between pornography consumption and either sexist behaviours or sexual violence is direct,¹⁶ others try to show that the social benefits provided by the consumption of pornography on society are immediate. However, both views fail in making false generalizations on human behaviour.

On the one hand, they simplify the connexion between pornography consumption and the incidence or the diminishment of sexual crimes. While pornography can help an individual to commit sex crimes or acquire sexist behaviours or attitudes, other factors also contribute such as the social context of the individual or psychological illnesses, for example. It is also true that some people might use pornography to release their sexual fantasies, but it cannot be said that all consumers will interpret pornography content in the same way.

On the other hand, those studies assume a deterministic model of human behaviour, in which men lose control over their behaviour and mindlessly respond to pornographic stimuli. The idea that men simply imitate what they see in pornography implies that they are not able to creatively and critically interpret pornographic materials. This perspective deteriorates the feminism goals because it justifies gender violence: it animalizes male sex drive and completely transfers the responsibility of sexual abuse to women.

However, the fact that there are divergent interpretations and different responses to pornographic materials challenges the widespread

¹⁵ From the last four decades until current days, many studies intent to demonstrate that the exposure to pornographic materials increases participants' sexist attitudes toward women and make them more likely to commit sexual crimes. Most of them suggest that sexual deviations are learned, not during one traumatic experience, but through a more gradual process occurring during masturbation to a memory learned through pornography.

¹⁶ For example, Ted Bundy, a serial murderer, stated that some of the murders he committed were motivated by his obsession with violent pornography (Shapiro, 2005, 160). Although there are many cases like this, it is a misconception that particular cases are sufficiently representative to generate a universal standard. It is an error to extend the idea that anyone who consumes pornography is a potential rapist or murderer. Often aggression is rooted in pathology of the individual which, together with the consumption of pornography and other factors, can contribute to that person committing sexual crimes.

perception among radical feminism that pornography has a single, harmful impact on the background conditions of communication. In some contexts, pornographic material can encourage viewers to rebel against conventional notions of feminine vulnerability, and not necessarily force them to be complicit in the violence, as radical feminists indicate. It is also possible that the publication of explicit sexual material allows the exploration of the roots of disturbing sexual fantasies and makes them accessible to the public debate and criticism.

Nonetheless, the boundaries between the intentions to denounce a violent act and the intentions to cause sexual arousal can be blurry: the sexual explicit material that pretends to denounce a violent act might cause the opposite effect. It can occur that, beyond contributing with the eradication of sexual violence, it might foster it. Many victims of sexual violence are re-victimised by retelling their stories multiple times and sometimes returning to the crime scene with investigators. Many times the attempts to speak out against harassment have also brought a counteraction: women who have publicly denounced attacks have in turn received abuses and even threats.

Even so, Langton would argue that the publication of sexual explicit material with the intention of denouncing a violent act might undermine the producers' freedom of speech, because the viewer could misunderstand what the author attempted to communicate and an "illocutionary act" would be produced. It can be argued, under the view of Ronald Dworkin (1993, 38), that it is absurd to think "that the right of freedom of speech includes a right to circumstances that encourage one to speak, and a right that others grasp and respect what one means to say." In that sense, regarding the "illocutionary act" that MacKinnon (1993) and Langton (2009) suggest, pornography productions go beyond what the most radical defenders of the freedom of speech have sought to protect and even infringe the viewers' right to generate their own opinion about the content of the material.

Absolute censorship, as proposed by radical feminists, is far from guaranteeing eradication of sexual violence, and would rather be entrenched by its invisibility. Furthermore, it can be advised that one effective way to attack a sexist attitude is to present it graphically. Therefore, to fight gender inequality and sexual discrimination, sexually explicit material must be depicted or described as discrimination, subordination, and domination. Two examples of this are *Ordeal* by Linda Lovelace, and *Marcy* by A. Dworkin. While these reports may

be misinterpreted, as it actually occurred with *Ordeal*, it is a fact that these works encourage others who have been victims of sexual crimes to speak up and denounce their offenders.¹⁷ Consequently with this, a fourth condition needs to be introduced.

4. That the social repercussion of the material fosters healthy human sexuality, sexual and gender equality, sexual freedom, and self-exploration, as it occurs with some material of the *Posporn* or of the feminist pornography. In this regard, the producers should prevent the harm to third parties, if that is in their power, such as the prohibition of sexist attitudes or behaviours and sexual crimes.

Given these four conditions the following thesis can be extracted: the hindrance or censorship of pornography might not always be the best protection against gender inequality and sexual violence. We must then insist on the politic, social, and cultural empowerment of women and sexual minorities. It is desirable to ensure the production of alternative representations of sexuality, made from divergent perspectives from the normative view. Freedom of speech “is never a value in and by itself but it is always produced within the precincts of some assumed conception of the good to which it must yield in the event of conflict” (Fish, 1994, 104).

III. What Should the State do about Pornography?

In light of what has been said, the question can now be answered as to what position the state should take towards pornographic materials. It is often thought that an activity should be prohibited or regulated by the state when it causes real damage to third parties. Accordingly, Mill’s harm principle helps to detect when a pornographic material should be banned or censored whether the damage is caused to society. But this is quite complex, because it is not always evident when pornographic material might cause real damage. It is often difficult to determine

¹⁷ For example, the *Project Unbreakable* campaign aims to raise awareness of the sexual assaults and encourage victims of sexual abuse to denounce their aggressors. In this campaign, victims of sexual abuse tell how these crimes occurred to them and take pictures with phrases that their rapists told them when they were sexually assaulted (*About Project Unbreakable*, 2013).

what kind of expressions injure others and which ones do not. It can be argued, for instance, that certain expressions might cause damage to third parties like defamation, blackmail, false advertisements of “miracle products,” or advertising that promotes the consumption of products hazardous to people’s health and welfare. From this perspective, these materials could only be considered as a harmful expression for society if they cause sexist attitudes or behaviours that may promote sex crimes.

However, the publication of violent or non-violent but degrading pornographic materials is neither a necessary nor sufficient reason to commit sexual crimes or to cause sexist attitudes or behaviours, as explained above. But this does not mean they are not harmful in any way, as they might contribute to the damage committed along with other factors such as individual pathologies or sexist values. For these reasons, the law should limit pornographic material that promotes sexist behaviours or attitudes, as well as those that encourage sex crimes to be committed. But this does not justify the censorship of the pornographic material as violent or non-violent but as degrading depictions or descriptions, as this would demoralize the autonomy of the producers, actors or models, as well as impede the right of consumers to generate their own opinion, causing the establishment of a tyrannical and oppressive state (see R. Dworkin, 1993; Fish, 1994, 115).

Therefore, pornographic material must be directly forbidden and punished by the state if it does not meet the first condition (that is, those involving oppression and violence in their production, when the people involved are being forced and harassed to participate in its production).

Moreover, the pornographic material which does not meet the second condition (enclosing subordination or acts of prostitution), or which does not meet the third condition (contents depicted or descriptions of sexual attitudes or sexual acts of dehumanization, hyper sexuality, discrimination or violence), or which does not meet the fourth condition (those promoting sexist behaviours and attitudes, as well as sex crimes) cannot be prohibited by the state, as this would weaken the autonomy of the producers, actors or models, as well as obstructing the right of consumers to generate their own opinion. Nevertheless, they can be limited and discouraged by the state, because the production and publication of pornographic materials like these is in conflict with other liberal democratic values such as democratic equality of women and sexual minorities.

In addition to this, it can be observed that although certain pornographic material does not directly cause harm to others, it might remain offensive to some people or social groups. For this reason, Mill's harm principle is not enough to determine the role to be played by the state in relation to pornographic materials, and that Joel Feinberg's offense principle must also be considered: "It is always a good reason to support a proposed criminal prohibition that would probably be an effective way of preventing serious offense (as opposed to injury or harm) to people other than the actor, and that it is probably a necessary means to that end" (1985, 1).

According to the offense principle, in order to consider pornographic material as offensive, a variety of elements must be taken into account, such as: the scope of the offense, the duration, the social value of the expression, the chances to elude the expression, the reasons of the speaker, the number of injured parties, the intensity of the offense, and the general interest of the community or the public at large (Feinberg, 1985, 138).

Regarding pornography, Feinberg (1985, 159) argues that a pornographic film cannot be censored, as it is easily avoidable. If someone wants to watch a pornographic movie for pleasure, then the offense principle does not apply. The same can be extended to other pornographic materials such as magazines, books, or audios. Hence, what should in fact be promoted is self-censorship. Therefore, the role of the law should focus on warning potential consumers or spectators about books, movies, audios, or magazines with explicit sexual content that could be offensive. But this is complicated when pornographic material promotes sexist attitudes or behaviours, as well as those that induce consumers to commit sexual crimes are taken into account.

We must not only consider the facilities to avoid the offensive material, but also the intensity of the offense. Violent or non-violent but degrading pornographic material, can communicate hate speech and encourage sexist attitudes and behaviours in society. According to Langton (1990, 313), those materials are inconsistent with other values of liberal democracies because it places women in a status of civil inferiority. Hence, Langton claims that the state should interfere and censor any sexual expression that communicates hate speech, even though they cannot provide any proof that real harm has been caused and the offense is easily avoidable.

But censorship itself will not create a civic equality culture nor guarantee respect for the dignity of women and sexual minorities. Some types of limitations are necessary to mitigate sexism, but not enough to achieve justice and effective respect of human rights. Adhering to censorship does not change the social attitudes against women, unless we have a more positive attitude towards women in order to counter those materials that express denigration and violence. In relation to this, the state should promote the production and dissemination of ethically permissible sexually-explicit materials, maybe through tax reductions for the producers. The state may also encourage artists, museums, advertisers, producers and others to produce and present works that show women as equal human beings and empowered as suggested by some materials of feminist pornography and *Posporn*.

IV. Conclusion

The ongoing debate about pornography is whether sexually-explicit materials cause or not any harm to the actors, consumers, women or society in general. Radical feminists and liberal feminists stand on the opposing sides of the debate. Despite the efforts of radical feminists to ban pornography, many liberal feminists remain unconvinced and maintain either that pornography does not cause harm to women —like the strong-liberalists view—, or they admit that pornography probably does cause some harm to women's interests, but deny that this harm is sufficiently great to offset the dangers inherent in censorship and to justify the violation of the rights of pornographers and consumers —like the moderate-liberal feminists perspective.

In this paper I have shown that liberal feminists' perspective on pornography is more accurate than the radical feminists'. However, this does not overthrow the radical feminists' view. The definition of pornography that is proposed in the first section offers a much broader and comprehensive characterization that encompasses the concerns of both feminists groups. Despite the fact that radical feminists are right in claiming that most of the pornographic materials that are currently produced are unethical and constitute hate speech, the liberal view is nevertheless right in arguing that not all pornographic materials are equally condemnable.

Hence, I have suggested that in order to judge the ethical status of a pornographic material we have to consider three elements: (i) the conditions in which it is produced, (ii) the content it represents or depicts,

and (iii) the social consequences it produces. From this consideration, I conclude that a pornographic material is unethical (1) if its production involves any transgression on the autonomy or violence against bodily integrity of those involved in this industry; (2) if the content of what it describes or depicts promote objectifying stereotypes, hyper sexuality, and discrimination; (3) if the content it depicts or describes encourages the consumers to have sexist attitudes or behaviours and violence or, to commit sexual crimes. In contrast to this, I have suggested that a pornographic material is ethically permissible when it is produced under optimal conditions and when the content of what it depicts or describes enforces a decent sexuality, sexual and gender equality, sexual autonomy and, self-exploration.

Accordingly, I have suggested that the state should not censure all pornographic material, as radical feminists insist upon, but only ban and punish those which meet (1), and limit those that meet (2) and (3). Additionally, I have argued that it should encourage those which are produced under ideal conditions and that the content of what it depicts or describes enforces women and sexual minorities' sexual empowerment in order to counteract the effects of (2) and (3).

V. References

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